Received By: pkahler

## 2005 DRAFTING REQUEST

Bill

Received: 10/18/2005

Wanted: As time permits				Identical to LRB:  By/Representing: Bill Savage  Drafter: pkahler				
For: Donald Pridemore (608) 267-2367								
This file may be shown to any legislator: <b>NO</b> May Contact:								
					Addl. Drafters:			
Subject: Dom. Rel cust./plac./vis.				Extra Copies:				
Submit vi	a email: YES							
Requester	's email:	Rep.Priden	nore@legis.	state.wi.us				
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/?	pkahler 10/18/2005	lkunkel 11/01/2005 kfollett 11/01/2005						
/P1			jfrantze 11/02/200	95	sbasford 11/02/2005			
/1	pkahler 11/14/2005	kfollett 11/16/2005	rschluet 11/16/200	05	mbarman 11/16/2005	mbarman 12/15/2005		

**LRB-3876** 12/15/2005 04:06:13 PM Page 2

<u>Vers.</u> <u>Drafted</u> <u>Reviewed</u> <u>Typed</u> <u>Proofed</u> <u>Submitted</u> <u>Jacketed</u> <u>Required</u>

FE Sent For: When

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Received By: pkahler

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May Cont	act:				Addl. Drafters:		
Subject: Dom. Rel cust./plac./vis.				Extra Copies:			
Submit via email: YES							
Requester	's email:	Rep.Pridem	ore@legis.s	state.wi.us			
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**LRB-3876** 11/16/2005 12:02:53 PM Page 2

<u>Vers.</u> <u>Drafted</u> <u>Reviewed</u> <u>Typed</u> <u>Proofed</u> <u>Submitted</u> <u>Jacketed</u> <u>Required</u>

FE Sent For:

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#### 2005 DRAFTING REQUEST

Bill Received By: pkahler Received: 10/18/2005 Identical to LRB: Wanted: As time permits For: Donald Pridemore (608) 267-2367 By/Representing: Bill Savage This file may be shown to any legislator: NO Drafter: pkahler Addl. Drafters: May Contact: Extra Copies: Dom. Rel. - cust./plac./vis. Subject: Submit via email: YES Rep.Pridemore@legis.state.wi.us Requester's email: Carbon copy (CC:) to: **Pre Topic:** No specific pre topic given **Topic:** Equalizing physical placement and replacing best interest of child with statutory requirements **Instructions:** See Attached **Drafting History:** Required Proofed **Submitted** Jacketed Reviewed <u>Typed</u> Vers. **Drafted** lkunkel /? pkahler 10/18/2005 11/01/2005 kfollett 11/01/2005 sbasford jfrantze

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FE Sent For:

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Received By: pkahler

#### 2005 DRAFTING REQUEST

**Bill** 

Received: 10/18/2005

Wanted: **As time permits** Identical to LRB:

For: **Donald Pridemore** (608) 267-2367 By/Representing: Bill Savage

This file may be shown to any legislator: **NO**Drafter: **pkahler** 

May Contact: Addl. Drafters:

Subject: **Dom. Rel. - cust./plac./vis.** Extra Copies:

Submit via email: **YES** 

Requester's email: Rep.Pridemore@legis.state.wi.us

Carbon copy (CC:) to:

No specific pre topic given

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Equalizing physical placement and replacing best interest of child with statutory requirements

**Instructions:** 

Pre Topic:

Topic:

See Attached

**Drafting History:** 

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FE Sent For:

### STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

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LRB

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ROTHERM DEARS

#### A LEGISLATIVE PROPOSAL TO CLARIFY THE PROVISIONS OF 1999 WISCONSIN ACT 9, RELATING TO CHILD PLACEMENT

(2/28/05)

It appears that the provisions introduced by 1999 Wisconsin Act 9 requiring parents to submit parenting plans and courts to maximizing placement with both parents, are being ignored by Wisconsin legal professionals and courts, as demonstrated by the published court of appeals decisions.

The Appellate courts concluded in *Keller v. Keller*, 2002 WI App 161, that § 767.24(4)(a) does *not* create a presumption in favor of equal placement. They recently reaffirmed that interpretation and concluded further that a parent enjoys no constitutional right to equal placement following divorce or estrangement from the other parent. *See Arnold v. Arnold*, 2004 WI App 62, and *Lofthus v. Lofthus*, 2004 WI App 65.

In these decisions the appellate courts never addressed the merits of 767.24(4)(a)(2) "The court shall set a placement schedule .... that maximizes the amount of time the child may spend with each parent.", effectively vetoing these requirement established by the legislature and Governor.

In Abbas v Palmersheim 2004 WI App 126 (6/30/04) the appellate court ruled that the changes passed by the legislature in 1999 Wisconsin Act 9 only apply to initial proceedings, and not to requests for modifications of existing placement orders. See http://www.wicourts.gov/ca/opinions/02/02-3390.doc In footnote 6 the court wrote "The legislature is delegated the task of promulgating laws and, in the process, must do so in a rational and logical manner so as to avoid absurd results. The legislature neglected this task by creating a new presumption without explicitly eliminating or repealing the old one. "

On 1/27/05 a Wisconsin Court of Appeals ruled in Landwehr v Landwehr (Appeal#03-2555 - paragraph 20), "The statute provides no definition of "maximizes." Nor does it explain how the court can maximize placement with one parent without reducing it for the other. In any event, Wis. Stat. §767.24(4)(a)2 does not require nor presume equal placement.\*/Keller v. Keller.

The following changes to Wisconsin statutes are proposed to clarify these requirement and inform the courts and legal professionals that the will of the legislature, as defined in the latest and more specific requirements established by 1999 Wisconsin Act 9, must be enforced ced..

when parties first of pea at first bearing (see eval separation, an action to put.)

Modify Section 767.24 (1m) (Parenting plans) to read:

767.24 (1m) Parenting plan. In an action for annulment, divorce or legal separation, an action to determine paternity or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court at or before any pretrial conference the initial appearance before the court or family court commissioner. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. A parenting plan shall provide information about the following questions which each parent, after considering all facts relevant to the best interest of the child as defined in 767.24(5), believes are in the

Item 3 requires maximizing placement to be based on the parenting plan, which define how each parent proposes to satisfy his or her responsibility for the children. This provision empowers parents to have more input into this decision and supports each parent's equal responsibility and right to participate in the raising of the children.

Modify Section 767.24(4) (Allocation of physical placement.) to read: 767.24(4) Allocation of physical placement.

best interest of the child.

- (a) 1. Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.
- 2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the <u>parenting plans submitted to the court by each parent</u>. factors in sub. (5). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that <u>maximizes</u> equalizes, as <u>mach as possible</u>, the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households.
- (b) A child is entitled to <u>equal</u> periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health. <u>If the court finds, by clear and convincing evidence, that a placement schedule defined under par. (a) would endanger the child's physical, mental or emotional health, the court shall consider the factors in sub. (5). and shall set a</u>

placement schedule that the court believes will secure the welfare and best interest of the child.

767.24(6) final order. (A) If legal custody or physical placement is contested, and the court orders sole custody or a placement schedule that does not equalize, as much as possible, placement with each parent, the court shall state in writing why its findings relative to legal custody or physical placement are in the best interest of the child

Item 4, 5, 6, and 7 require mediators and guardian ad litems to use the same legal standard for resolving child custody and placement disputes as court/commissioners and judges.

- 4. Modify Section 767.001 Definitions to read:
  767.001 (3) "Mediation" means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements, with the best interest of the child as the paramount consideration consistent with the provisions of s. 767.24.
- Modify Section 767.11(10) Powers and duties of mediator. to read:

  767.11(10) A mediator assigned under sub. (6) shall be guided by the best interest of the child provisions of s. 767.24. and may do any of the following, at his or her discretion
- 6. Modify Section 767.11(12) Mediation agreement to read:
  767.11(12)(a) Any agreement which resolves issues of legal custody or periods of physical placement between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation.

  Any reviewing attorney or guardian ad litem shall certify on the mediation agreement that he or she reviewed it and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the written mediation agreement is in the best interest of the child consistent with the provisions of s. 767.24 based on the information presented to the mediator and accurately reflects the agreement made between the parties. The court may approve or reject the agreement, based on the best interest of the child whether the

agreement is consistent with the provisions of s. 767.24. The court shall state in writing its reasons for rejecting an agreement.

7. Modify Section 767.045 (4) (Responsibilities of guardian ad litem) to read:

767.045 (4) Responsibilities. The guardian ad litem shall be an advocate to protect the welfare and for the best interests of a minor child, consistent with the provisions of s. 767.24, as to paternity, legal custody, physical placement and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors-under s. 767.24 (5) and-custody studies under s. 767.11 (14). The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.11 (12). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.24 (5) (b). The guardian ad litem has none of the rights or duties of a general guardian.

Item 8 remove unnecessary legal obstacles that obstruct parents that are willing to assume their full responsibility to participate in the raising of their children.

Modify Section 767.325(1)(b) to read:

767.325 Revision of legal custody and physical placement orders.

Except for matters under s. 767.327 or 767.329, the following provisions are applicable to modifications of legal custody and physical placement orders:

- (1) SUBSTANTIAL MODIFICATIONS.
- (b) After 2-year period. 1. Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may shall modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child in a manner consistent with s. 767.24. if the court finds all of the following:
- a. The modification is in the best interest of the child.
- b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.
- 2. With respect to subd. 1., there is a rebuttable presumption that:
- a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.
- b. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

3. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.



## State of Misconsin

## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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..; relating to: preparing and filing parenting plans, equalizing periods of physical placement, using parenting plans to determine periods of physical placement, and modifying physical placement and custody orders.

Analysis by the Legislative Reference Bureau This is a preliminary draft. An analysis will be provided in a later version.

#### The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**SECTION 1.** 767.23 (1n) ( $\overset{\checkmark}{a}$ ) of the statutes is amended to read:

767.23 (1n) (a) Before making any temporary order under sub. (1), the court or circuit court commissioner shall consider those factors and other information that the court is required by this chapter to consider before entering a final judgment on the same subject matter. In making a determination under sub. (1) (a) or (am), the court or circuit court commissioner shall consider the factors under s. 767.24 (5) (am),

subject to s. 767.24 (5) (bm). 10

SECTION 2. 767.24 (1m) (intro.) of the statutes is amended to read:

167.24 (1m) Parenting Plan. (intro.) In an action for annulment, divorce, or legal separation, an action to determine paternity, or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court at or before any pretrial conference the party's first appearance before the court or circuit court commissioner. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. In preparing a parenting plan, a party shall consider all facts relevant to the best interest of the child and the factors under sub. (5) (am), subject to sub. (5) (bm). A parenting plan shall provide information about the following questions:

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.

SECTION 3. 767.24 (4) (a) 2. of the statutes is amended to read:

767.24 (4) (a) 2. In Except as provided in par. (b), in determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm) parenting plan or plans filed with the court under sub. (1m). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes equalizes the amount of time the child may spend with each parent, taking except that the court may modify a schedule that provides for equal time with each parent to take into account geographic separation and accommodations for different households.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.

SECTION 4. 767.24 (4) (b) of the statutes is amended to read:

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767.24 (4) (b) A child is entitled to equal periods of physical placement with both parents, subject to the modification specified in par. (a) 2., unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental, or emotional health. If the court finds by clear and convincing evidence that a placement schedule determined in the manner specified in par. (a) 2. would endanger the child's physical, mental, or emotional health, the court shall consider the factors under sub. (5) (am), subject to sub. (5) (bm), and set a placement schedule that protects and promotes the general welfare and best interests of the child.

**History:** 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.

SECTION 5. 767.24 (5) (am) (intro.) of the statutes is amended to read:

767.24 (5) (am) (intro.) Subject to par. (bm), in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The In determining legal custody and periods of physical placment, the court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to par. (bm), in determining legal custody and, if sub. (4) (b) applies, periods of physical placement, the court shall consider the following factors in making its determination:

**History:** 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.

(END)

D- vita

1. I did not include the change to s. 767.325 in this version of the draft because I'm not sure what the change is intended to accomplish. If the intention is just to say that modifications to legal custody or physical placement must be done in a manner consistent with s. 767.24, s. 767.325 (5m) already says that. In *Abbas v. Palmersheim* (cited on page 1 of the drafting instructions), the lead opinion found s. 767.325 (5m) to be in conflict with the rebuttable presumption under s. 767.325 (1) (b) 2. The drafting instructions for s. 767.325 (1) (b) (#8 on page 5 of the instructions) gets rid of the rebuttable presumption, but repeats what is in s. 767.325 (5m). Do you want to get rid of all of the provisions in s. 767.325 that provide criteria for determining modifications of legal custody and physical placement and just say that all modifications must be determined in a manner consistent with s. 767.24? If not, which of the provisions in s. 767.325 should not be determined in a manner consistent with s. 767.24? Are there any modifications, such as under sub. (1) (a) (i.e., within two years after initial order), that you want to keep as is in s. 767.325?

If you want to retain the higher standard for modifications within two years after the initial order, you could retain sub. (1) (a) and then require the court to determine all other modifications in a manner consistent with s. 767.24. You might also want to require that there be a substantial change in circumstances before the court could modify a custody or placement order. Without that, you leave the prospect of parties being able to bring their cases back to court repeatedly, without any change in circumstances, for the purpose of harassing the other party or in repeated efforts to convince the judge that s. 767.24 should be interpreted according to their way of thinking.

2. At our meeting, we discussed amending s. 767.24 (4) (a) 2. so that the court would start with equal placement and then consider the factors under sub. (5), in every case, to modify that schedule if appropriate. That did not seem to make sense in light of the proposed amendment to s. 767.24 (4) (b), which requires the court to use the factors under sub. (5) to modify equal placement if the court determines that physical placement with a parent would endanger the child's physical, mental, or emotional health, which would be in only a very limited number of cases. Consequently, I left "geographic separation and accommodations for different households" as the basis for modifying equal placement under s. 767.24 (4) (a) 2. Let me know if this is not acceptable to you.

- 3. Since the judge would no longer consider the factors under s. 767.24 (5) for physical placement determinations unless placement with a party would endanger the child's physical, mental, or emotional health, do you want to change what the guardian ad litem considers under s. 767.045 (4), at least for purposes of physical placement?
- 4. Please review s. 767.24 (6). Is this subsection okay with its emphasis on the best interest of the child?
- 5. There is a basic conflict between the way in which periods of physical placement are determined and the provisions that deal with the court finding that a party has engaged in a pattern or serious incident of interspousal battery or domestic abuse. If the court makes that finding, there is a rebuttable presumption that the party engaging in the interspousal battery or domestic abuse should not have joint or sole legal custody. In addition, under s. 767.24 (5) (bm), the paramount concerns in determining periods of physical placement are the safety and well-being of the child and the safety of the parent who was the victim. If a party engaged in abusive behavior only towards the other party and not towards the child, it will not necessarily be the case that the court will find that placement with the abusive party will endanger the child's physical, mental, or emotional health. How do you want to reconcile requiring equal placement with requiring the safety and well-being of the child to be a paramount concern in determining periods of physical placement? I do not feel that I can make any modifications to s. 767.24 (5) (bm) or statutes related to it until that is resolved. Reviewing 2003 Wisconsin Act 130 might help you determine how to address this issue.
- 6. Section 767.24 (4) (b) in current law assumes that a party will not be awarded periods of physical placement if placement will endanger the child's physical, mental, or emotional health. Under this draft, if placement will endanger the child's physical, mental, or emotional health, the court is supposed to consider the factors under sub. (5) and, presumably, is not required to equalize placement. Except for s. 767.247, is there ever a situation in which the court may award no physical placement?

Pamela J. Kahler Senior Legislative Attorney Phone: (608) 266-2682

E-mail: pam.kahler@legis.state.wi.us

1. I did not include the change to s. 767.325 in this version of the draft because I'm not sure what the change is intended to accomplish. If the intention is just to say that modifications to legal custody or physical placement must be done in a manner consistent with s. 767.24, s. 767.325 (5m) already says that. In Abbas v. Palmersheim (cited on page 1 of the drafting instructions), the lead opinion found's. 767.325 (5m) to be in conflict with the rebuttable presumption under s. 767.325 (1) (b) 2. The drafting instructions for s. 767.325 (1) (b) (#8 on page 5 of the instructions) gets rid of the re<u>buttable presumption, but repeats what is</u> in s. 767.325 (5m). Do you want to get rick of all of the provisions in s. 767.325 that provide criteria for determining modifications of legal custody and physical placement and just say that all modifications must be determined in a manner consistent with s. 767.24? If not, which of the provisions in  $\zeta \phi_0(1)(a)$ s. 767.325 should not be determined in a manner consistent with s. 767.24? Are there any modifications, such as under (ub. (1) (a))(i.e., within two years after initial order), & ONLY THIS POOTISION that you want to keep as is in s. 767.325? YES

EXCEPT

If you want to retain the higher standard for modifications within two years after the initial order, you could retain sub. (1) (a) and then require the court to determine all other modifications in a manner consistent with s. 767.24.7 You might also want to require that there be a substantial change in circumstances before the court could modify a custody or placement order. Without that, you leave the prospect of parties being able to bring their cases back to court repeatedly, without any change in circumstances, for the purpose of harassing the other party or in repeated efforts to convince the judge that s. 767.24 should be interpreted according to their way of thinking.

2. At our meeting, we discussed amending s. 767.24 (4) (a) 2. so that the court would start with equal placement and then consider the factors under sub. (5), in every case, to modify that schedule if appropriate. That did not seem to make sense in light of the proposed amendment to s. 767.24 (4) (b), which requires the court to use the factors under sub. (5) to modify equal placement if the court determines that physical placement with a parent would endanger the child's physical, mental, or emotional health, which would be in only a very-limited number of cases. Consequently, I left "geographic separation and accommodations for different households" as the basis for modifying equal-placement under s. 767.24 (4) (a) 2. Let me know if this is not acceptable to you. THIS IS NOT A CUEDTABLE

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3. Since the judge would no longer consider the factors under s. 767.24 (5) for physical placement determinations unless placement with a party would endanger the child's physical, mental, or emotional health, do you want to change what the guardian ad litem considers under s. 767.045 (4), at least for purposes of physical placement?

4. Please review s. 767.24 (6). Is this subsection okay with its emphasis on the best interest of the child? (No) (See IRM 8) ATTACKED

5. There is a basic conflict between the way in which periods of physical placement are determined and the provisions that deal with the court finding that a party has engaged in a pattern or serious incident of interspousal battery or domestic abuse. If the court makes that finding, there is a rebuttable presumption that the party engaging in the interspousal battery or domestic abuse should not have joint or sole legal custody. In addition, under s. 767.24 (5) (bm), the paramount concerns in determining periods of physical placement are the safety and well-being of the child K-YES and the safety of the parent who was the victim.) If a party engaged in abusive behavior only towards the other party and not towards the child, it will not necessarily be the case that the court will find that placement with the abusive party will endanger the child's physical, mental, or emotional health. How do you want to reconcile requiring equal placement with requiring the safety and well-being of the child to be a paramount concern in determining periods of physical placement? I do not feel that Franche any modifications to s. 767.24 (5) (bm) or statutes related to it until that is resolved. Reviewing 2003 Wisconsin Act 130 might help you determine how to address this issue.

6. Section 767.24 (4) (b) in current law assumes that a party will not be awarded periods of physical placement if placement will endanger the child's physical, mental, or emotional health. Under this draft, if placement will endanger the child's physical, mental, or emotional health, the court is supposed to consider the factors under sub. (5) and, presumably, is not required to equalize placement. Except for s. 767.247, is there ever a situation in which the court may award no physical placement?

YES: IN CASES WHEN A PARENT POSES A THEEST THE CHILD THE COURT CAN ORDER SUPPERVISED ONE NO Pamela J. Kahler

Senior Legislative Attorney

Phone: (608) 266-2682

E-mail: pam.kahler@legis.state.wi.us

THERE IS NO CONFLICT. THE COURT'S RESPONSIBILITY FOR
SETTING APLACEMENT ORDER IS TO CONSIDER THE SAPETY
OF THE CHILD. THIS BILL + 767.24(5)(5)M) ARE THE SAME)
YOU COURT ADD AT THE END OF 767.24(5)(5)M)
IF THE COURT ORDERS PLACEMENT, OF A CHILDYWITH A PARENT
THAT HAS ABUSED THE OTHER PARENT, THE COURT ORDER
SHALL ALSO INCLUDE PROVISIONS FOR TRANSITIONS OF
PLACEMENT THAT WILL ASSURE THE SAFETY OF THE

ABUSEN PARENT.

## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT to amend 767.23 (1n) (a), 767.24 (1m) (intro.), 767.24 (4) (a) 2., 767.24 (4) (b) and 767.24 (5) (am) (intro.) of the statutes; relating to: preparing and 2 filing parenting plans, equalizing periods of physical placement, using 3 parenting plans to determine periods of physical placement, and modifying 4 physical placement and custody orders. 5

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#### Analysis by the Legislative Reference Bureau This is a preliminary draft. An analysis will be provided in a later version.

#### The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 767.23 (1n) (a) of the statutes is amended to read:

767.23 (1n) (a) Before making any temporary order under sub. (1), the court or circuit court commissioner shall consider those factors and other information that the court is required by this chapter to consider before entering a final judgment on the same subject matter. In making a determination under sub. (1) (a) or (am), the



court or circuit court commissioner shall consider the factors under s. 767.24 (5) (am), subject to s. 767.24 (5) (bm).

Section/2. 767.24 (1m) (intro.) of the statutes is amended to read:

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767.24 (1m) Parenting Plan. (intro.) In an action for annulment, divorce, or legal separation, an action to determine paternity, or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court at or before any pretrial conference the party's first appearance before the court or circuit court commissioner. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. In preparing a parenting plan, a party shall consider all facts relevant to the best interest of the child and the factors under sub. (5) (am), subject to sub. (5) (bm). A parenting plan shall provide information about the following questions:

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SECTION 3. 767.24 (4) (a) 2. of the statutes is amended to read:

of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm) parenting plan or plans filed with the court under sub. (1m). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes equalizes the amount of time the child may spend with each parent, taking except that the court may modify a schedule that provides for equal time with each parent to take into account geographic separation and accommodations for different households.

SECTION 4. 767.24 (4) (b) of the statutes is amended to read:

767.24 (4) (b) A child is entitled tolequal periods of physical placement with
both parents, subject to the modification specified in par. (a) 2., unless, after a
hearing, the court finds that physical placement with a parent would endanger the
child's physical, mental, or emotional health. If the court finds by clear and
convincing evidence that a placement schedule determined in the manner specified
in par. (a) 2, would endanger the child's physical, mental, or emotional health, the
court shall consider the factors under sub. (5) (am), subject to sub. (5) (bm), and set
a placement schedule that protects and promotes the general welfare and best
interests of the child.

SECTION 5. 767.24 (5) (am) (intro.) of the statutes is amended to read:

767.24 (5) (am) (intro.) Subject to par. (bm), in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The <u>In determining legal custody and periods of physical placement</u>, the court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to par. (bm), <u>in determining legal custody and</u>, if sub. (4) (b) applies, periods of physical placement, the court shall consider the following factors in making its determination:

(END)

## LRB 233/P1dn response comments 4/10/05

It would be very helpful to clarify the intent of this bill by including a preface in the beginning part of this Bill. This would serve to clarify the intent in the Bill's history only. This would not appear in the statutes. It should read:

#### Preface

The legislature declares that the public policy of this State is to assure children the fullest opportunity to establish a parental relationship with both of their parents and to accomplish this in a manner that reduces the need for the parents to litigate this issue in Wisconsin courts.

To achieve this goal, this bill requires each parent in a paternity or divorce case to submit a parenting plan, at or before the initial appearance before a court commissioner or judge, which defines what each parent believes in the best interest of the children. The courts are then required to equalize to the highest degree placement of the children with both parents after considering the parenting plans of both parents and taking into account geographic separation and accommodations for different households, unless the court find by clear and convincing evidence that this would be harmful to the children.

This bill does not require courts to order equal placement in all cases, but only in those cases, where both parents live in the same community, both want to be fully involved in the raising of the children, and there is no evidence that this would be harmful to the children. In cases where geographic separation and accommodations for different households do not allow equal placement or a parent wants to assume less than equal placement, say 30%, the court would be required to order that 30% placement even if the other parent wants that parent to have only 20% placement, unless there is evidence that the 30% placement would be harmful to the child.

If the court finds that equalizing to the highest degree placement with each parent would be harmful to the child, the court would then have the responsibility to set a placement order that the court believes would be in the best interest of the child.

It is the intent of the legislature that this method of resolving placement disputes between parents in paternity and divorce cases be used in setting all temporary orders, final orders, and in modification of existing orders after a two year cooling off period. Lastly this bill expects not only court commissioners and judges to follow this procedure, but also any mediator or guardian ad litem that maybe appointed in any of these cases.

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Modify Section 767.325(1)(b) to read: 3.

767.325 Revision of legal custody and physical placement orders. Except for matters under s. 767.327 or 767.329, the following provisions are applicable to modifications of legal custody and physical placement orders:

- (1) SUBSTANTIAL MODIFICATIONS.
- (b) After 2-year period. 1. Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may shall modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child in a manner consistent with s. 767.24. if the court finds all of the following:
- a. The modification is in the best interest of the child.
- b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.
- 2. With respect to subd. 1., there is a rebuttable presumption that:
- a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.
- b. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.
- 3. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.

Item 4, 5, 6, and 7 require mediators and guardians ad litem to use the same legal standard for resolving child custody and placement disputes as court commissioners and judges.

- Modify Section 767.001 Definitions to read: 767.001 (3) "Mediation" means a cooperative process involving the parties and a mediator, the 4. purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements, with the best interest of the child as the paramount consideration consistent with the provisions of s. 767.24.
- Modify Section 767.11(10) Powers and duties of mediator. to read: 5. 767.11(10) A mediator assigned under sub. (6) shall be guided by the best interest of the child provisions of s. 767.24. and may do any of the following, at his or her discretion
- Modify Section 767.11(12) Mediation agreement to read: 6. 767.11(12)(a) Any agreement which resolves issues of legal custody or periods of physical placement between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation.

Any reviewing attorney or guardian ad litem shall certify on the mediation agreement that he or she reviewed it and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the written mediation agreement is in the best interest of the child consistent with the provisions of s. 767.24 based on the information presented to the mediator and accurately reflects the agreement made between the parties. The court may approve or reject the agreement, based on the best interest of the child whether the agreement is consistent with the provisions of s. 767.24. The court shall state in writing its reasons for rejecting an agreement.

## 7. Modify Section 767.045 (4) (Responsibilities of a guardian ad litem) to read:

767.045 (4) Responsibilities. The guardian ad litem shall be an advocate to protect the welfare and for the best interests of a minor child, consistent with the provisions of s. 767.24, as to paternity, legal custody, physical placement and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors-under s. 767.24 (5) and-custody studies under s. 767.11 (14). The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.11 (12). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.24 (5) (b). The guardian ad litem has none of the rights or duties of a general guardian.

Item 8 Modifies the court's responsibility to explain in writing it's final order consistent with the revisions in 767.24.

#### 8. Modify Section 767.24 (6) (Final Order) to read:

(A) If legal custody or physical placement is contested, and the court orders sole custody or a placement schedule that does not equalize to the highest degree placement with each parent, the court shall state in writing why its findings relative to legal custody or physical placement are in the best interest of the child.

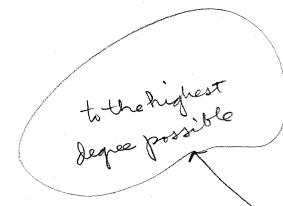


### State of Misconsin 2005 - 2006 LEGISLATURE

LRB-2333/PA
PJK:kjf:N

## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION





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AN ACT to amend 767.23 (1n) (a), 767.24 (1m) (intro.), 767.24 (4) (a) 2., 767.24

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(4) (b) and 767.24 (5) (am) (intro.) of the statutes; relating to: preparing and

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filing parenting plans, equalizing periods of physical placement using

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parenting plans to determine periods of physical placement, and modifying physical placement and custody orders.

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#### Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**SECTION 1.** 767.23 (1n) (a) of the statutes is amended to read:

767.23 (1n) (a) Before making any temporary order under sub. (1), the court or circuit court commissioner shall consider those factors and other information that the court is required by this chapter to consider before entering a final judgment on the same subject matter. In making a determination under sub. (1) (a) or (am), the

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court or circuit court commissioner shall consider the factors under s. 767.24 (5) (am), subject to s. 767.24 (5) (bm).

SECTION 2. 767.24 (1m) (intro.) of the statutes is amended to read:

legal separation, an action to determine paternity, or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court at or before any pretrial conference the party's first appearance before the court or circuit court commissioner. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. In preparing a parenting plan, a party shall consider all facts relevant to the best interest of the child and the factors under sub. (5) (am) subject to sub. (5) (bm). A parenting plan shall provide information about the following questions:

SECTION 3. 767.24 (4) (a) 2. of the statutes is amended to read:

767.24 (4) (a) 2. In Except as provided in par. (b), in determining the allocation of periods of physical placement, the court shall consider each ease on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm) parenting plan or plans filed with the court under sub. (1m). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes equalizes the amount of time the child may spend with each parent, taking except that the court may modify a schedule that provides for equal time with each parent to take into account geographic separation and accommodations for different households.

SECTION 4. 767.24 (4) (b) of the statutes is amended to read:

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767.24 (4) (b) A child is entitled to equal periods of physical placement with both parents, subject to the modification specified in par. (a) 2., unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental, or emotional health. If the court finds by clear and convincing evidence that a placement schedule determined in the manner specified in par. (a) 2. would endanger the child's physical, mental, or emotional health, the court shall consider the factors under sub. (5) (am), subject to sub. (5) (bm), and set

a placement schedule that protects and promotes the general welfare and best interests of the child.

SECTION 5. 767.24 (5) (am) (intro.) of the statutes is amended to read:

767.24 (5) (am) (intro.) Subject to par. (bm), in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The In determining legal custody and periods of physical placement, the court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to par. (bm), in determining legal custody and, if sub. (4) (b) applies, periods of physical placement, the court shall consider the following factors in making its determination:

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#### 2005-2006 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

#### INSERT 1-5

1	SECTION 1. 51.30 (5) (bm) of the statutes is amended to read:
2	51.30 (5) (bm) Parents denied physical placement. A parent who has been
3	denied periods of physical placement with a child under s. 767.24 (4) (b) or 767.325
4	(4) may not have the rights of a parent or guardian under pars. (a) and (b) with
5	respect to access to that child's court or treatment records.
6	History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38.  SECTION 2. 55.07 (2) of the statutes is amended to read:
7	55.07 (2) A parent who has been denied periods of physical placement under
8	s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with
9	respect to access to a child's records under this chapter.
LO	History: 1977 c. 428; 1987 a. 355.  SECTION 3. 146.835 of the statutes is amended to read:
11	146.835 Parents denied physical placement rights. A parent who has
12	been denied periods of physical placement under s. $767.24(4)(b)$ or $767.325(4)$ may
13	not have the rights of a parent or guardian under this chapter with respect to access
14	to that child's patient health care records under s. 146.82 or 146.83.
	History: 1987 a. 355.

(END OF INSERT 1-5)

#### 2005-2006 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

#### INSERT 1-6

SECTION 1. 767.001 (3) of the statutes is amended to read: 1 767.001 (3) "Mediation" means a cooperative process involving the parties and 2 a mediator, the purpose of which is to help the parties, by applying communication 3 and dispute resolution skills, define and resolve their own disagreements, with the 4 best interest of the child as the paramount consideration in a manner consistent with 5 s. 767.24. 6 History: 1987 a. 355; 1995 a. 100, 279, 404; 1997 a. 3, 27, 35. SECTION 2. 767.11 (10) (intro.) of the statutes is amended to read: 7 767.11 (10) POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned 8 under sub. (6) (a) shall be guided by the best interest of the child s. 767.24 and may 9 do any of the following, at his or her discretion: 10 History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93–03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109; 2003 a. 130. SECTION 3. 767.11 (12) (a) of the statutes is amended to read: 11 767.11 (12) (a) Any agreement which resolves issues of legal custody or periods 12 of physical placement between the parties reached as a result of mediation under this 13 section shall be prepared in writing, reviewed by the attorney, if any, for each party, 14 and by any appointed guardian ad litem, and submitted to the court to be included 15 in the court order as a stipulation. Any reviewing attorney or guardian ad litem shall 16 certify on the mediation agreement that he or she reviewed it and the guardian ad 17 litem, if any, shall comment on the agreement based on the best interest of the child. 18 The mediator shall certify that the written mediation agreement is in the best 19 interest of the child consistent with s. 767.24 based on the information presented to 20 the mediator and accurately reflects the agreement made between the parties. The

court may approve or reject the agreement, based on the best interest of the child

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whether the agreement is consistent with s. 767.24. The court shall state in writing its reasons for rejecting an agreement.

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93–03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109; 2003 a. 130. (END OF INSERT 1–6)

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#### INSERT 2-24

SECTION 4. 767.24 (4) (a) 2. of the statutes is amended to read:

767.24 (4) (a) 2. In Except as provided in par. (b), in determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5) (am), subject to sub. (5) (bm). The parenting plan or plans filed with the court under sub. (1m). Except as provided in par. (b), the court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes equalizes to highest degree possible the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.

#### (END OF INSERT 2-24)

#### INSERT 3-18

SECTION 5. 767.24 (6) (a) of the statutes is amended to read:

767.24 (6) (a) If legal custody or physical placement is contested and the court orders sole legal custody or a placement schedule that does not equalize to the highest degree possible the amount of time that the child may spend with each parent, the court shall state in writing why its findings the reasons for its decision relating to legal custody or physical placement are in the best interest of the child.

**History:** 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.



Jus 3-18 contd 2063

SECTION 6. 767.325 (1) (title) of the statutes is repealed. 1 SECTION 7. 767.325 (1) (a) of the statutes is renumbered 767.325 (1), and 2 767.325 (1) (intro.), as renumbered, is amended to read: 3 767.325 (1) WITHIN MODIFICATION WITHIN 2 YEARS AFTER INITIAL ORDER. (intro.) 4 Except as provided under sub. (2), \*A court may not modify any of the following 5 orders before 2 years after the initial order is entered under s. 767.24, unless a party 6 seeking the modification, upon petition, motion, or order to show cause shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child: 9 History: 1987 a. 355, 364; 1995 a. 27 s. 9126 (19); 1999 a. 9; 2003 a. 130. SECTION 8. 767.325 (1) (b) of the statutes is repealed. 10 SECTION 9. 767.325 (2) of the statutes is repealed. 11 SECTION 10. 767.325 (2m) of the statutes is repealed. 12 SECTION 11. 767.325 (3) of the statutes is repealed. 13 SECTION 12. 767.325 (4) of the statutes is repealed. 14 **SECTION 13.** 767.325 (4m) (a) of the statutes is amended to read: 15 767.325 (4m) (a) Notwithstanding subs. (1) to (4) and (2c), upon petition, 16 motion, or order to show cause by a party or on its own motion, a court shall modify 17 a physical placement order by denying a parent physical placement with a child if 18 the parent has been convicted under s. 940.01 of the first-degree intentional 19 homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's 20 other parent, and the conviction has not been reversed, set aside, or vacated. 21

SECTION 14. 767.325 (5m) of the statutes is renumbered 767.325 (2c) and

amended to read:

History: 1987 a. 355, 364; 1995 a. 27 s. 9126 (19); 1999 a. 9; 2003 a. 130.

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767.325 (2c) Factors to consider Modfication after 2-year period. In Except 1 as provided in sub. (1), in all actions to modify legal custody or physical placement 2 orders, the court shall consider the factors under s. 767.24 (5) (am), subject to s. 3 767.24 (5) (bm), and shall make its determination in a manner consistent with s. 4 767.24. 5 History: 1987 a. 355, 364; 1995 a. 27 s. 9126 (19); 1999 a. 9; 2003 a. 130. SECTION 15. 767.325 (6m) of the statutes is amended to read: 6 767.325 (6m) PARENTING PLAN. In any action to modify a legal custody or 7 physical placement order under sub. (1) or (2c), the court may require the party 8 seeking the modification to file with the court a parenting plan under s. 767.24 (1m) 9 before any hearing is held. 10

History: 1987 a. 355, 364; 1995 a. 27 s. 9126 (19); 1999 a. 9; 2003 a. 130. (END OF INSERT 3–18)

# DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-2333/P2dn PJK:kjf:rs

July 6, 2005

1. Here is the next version of LRB-2333. I worked on it when I could during the budget process, so I hope I did not inadvertently miss something in the instructions. (The redraft instructions included a marked-up version of my P1dn, a marked-up version of the P1 draft, a one page preface, and two pages of additional instructions numbered from 3. to 8. Am I missing anything?)

The draft does not include the proposed preface, which is what we call an intent statement, and which we normally do not include with bills (except in only certain, very limited situations, which do not apply to this bill). The drafting file will contain the proposed preface, however, as part of the drafting request and record.

- 2. As you requested, this bill does not include the proposed change to s. 767.045 (4), since that relates to guardians ad litem. I did include the proposed changes to the mediation-related sections, however.
- 3. My interpretation of the interaction between the new language for physical placement and s. 767.24 (5) (bm) is that the court does not consider the factors under s. 767.24 (5) (am), and is not subject to s. 767.24 (5) (bm), unless the court first determines that equalizing placement to the highest degree possible would endanger the child's physical, mental, or emotional health. (Of course, the parties are supposed to consider the factors under s. 767.24 (5) (am) when preparing their parenting plans.) If the court determines that equalizing placement to the highest degree possible would endanger the child's physical, mental, or emotional health, the court considers the factors under s. 767.24 (5) (am) in determining placement. However, if the court finds that a parent abused the other parent, s. 767.24 (5) (bm) requires the paramount concern in determining physical placement to be the safety and well-being of the child and parent who was abused. Is that interpretation consistent with your intent?
- 4. Under this draft, except for ss. 767.247 and 767.325 (4m), may a court deny a parent periods of physical placement? Section 767.24 (4) (b) has been amended to require a court to set a physical placement schedule that protects and promotes the general welfare and best interests of the child if the court determines that a placement schedule that equalizes placement to the highest degree possible would endanger the child's physical, mental, or emotional health. This seems to infer that the court may not deny physical placement altogether, but it is unclear. If the court may not deny physical placement altogether, that must be stated explicitly, or it will be unclear to

judges also. If the court may not deny physical placement altogether, there are numerous other sections of the statutes, both in ch. 767 and outside of that chapter, that must be amended to be consistent, including s. 767.24 (4) (c), (cm), and (d).

Pamela J. Kahler Senior Legislative Attorney

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 $E-mail:\ pam.kahler@legis.state.wi.us$